No. 80-1321

In the Supreme Court of the United States

OCTOBER TERM, 1980

METROPOLITAN DETROIT AREA HOSPITAL SERVICES, INC., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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The question presented in this federal income tax case is whether a corporation operated by several tax-exempt charitable hospitals for the purpose of providing hospital laundry services is itself a tax-exempt charitable organization under Section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C.). This case is governed by the Court's recent decision in *HCSC-Laundry* v. *United States*, No. 80-338 (Feb. 23, 1981), which, in accord with the court of appeals in this case (Pet. App. B-1 to B-12), held that such a corporation was not a tax-exempt charitable organization under Section 501(c)(3) of the Code.

The pertinent facts may be summarized as follows: Petitioner was incorporated on June 15, 1970, as a nonprofit Michigan corporation to provide laundry and other services

for its tax-exempt hospital members. During 1973, one of the taxable years at issue, petitioner provided laundry service for its five tax-exempt hospital members. During 1975, the other taxable year at issue, petitioner provided laundry service for its six tax-exempt hospital members. Only hospitals that are publicly owned and operated by a municipal corporation or a state or local agency, or that are nonprofit corporations exempt from federal income taxation and from ad valorem property taxes, are eligible for membership in petitioner. Each of the member hospitals has entered into a written contract with petitioner providing that petitioner is to be the exclusive supplier of laundry services with respect to general hospital laundry and linen items (Pet. App. A-1, B-1 to B-2; R. 3, 5, 19, 26, 41).[1]

Petitioner derives income from membership fees based on the amount of service actually provided. The charge per pound of laundry is set from time to time by the board of trustees, on which every member hospital is represented, and is calculated so as to cover the actual costs of operation and retirement of debt (Pet. App. A-1, B-1 to B-2).

No part of petitoner's earnings inures to the benefit of any individual (Pet. App. A-11; R. 8). Petitioner is exempt from Michigan ad valorem personal and real property taxes and from Michigan sales tax (Pet. App. A-2, B-2).

On April 17, 1975, petitioner filed an application for exemption from federal income taxation, which was denied by letter dated September 1, 1976. The Internal Revenue Service rejected petitioner's protest on this determination on December 28, 1976 (Pet. App. A-2, B-2).

On October 26, 1976, petitioner filed claims for refund of taxes it had paid for its taxable years ending October 31, 1973, and October 31, 1975. Following the denial of its

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[1] "R." refers to the record in the court of appeals.

refund claims, petitioner commenced this refund suit in the United States District Court for the Eastern District of Michigan, urging that it was a tax-exempt organization "organized and operated exclusively for religious, charitable, scientific, * * * or education purposes * * *" under Section 501(c)(3) of the Code (Pet. App. A-2 to A-3).

The district court upheld petitioner's claim (Pet. App. A-1 to A-15). The court of appeals reversed (Pet. App. B-1 to B-12). It held that when Congress enacted Section 501(e) of the Code, it determined not to give tax-exempt status to mutual cooperative hospital laundries such as petitioner. In so holding, it agreed with the Third Circuit's decision in *HCSC-Laundry* v. *United States*, 624 F. 2d 428 (1980), aff'd, No. 80-338 (Feb. 23, 1981), and with *Hospital Central Services Association* v. *United States*, 623 F. 2d 611 (9th Cir. 1980), cert. denied, No. 80-631 (Feb. 23, 1981).

Since the question presented in this case is governed by this Court's decision in *HCSC-Laundry*, there is no reason for further review by this Court.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

LAWRENCE G. WALLACE*
Acting Solicitor General

MARCH 1981

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*The Solicitor General is disqualified in this case.